

MAR 17 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARIO JAIME-DUARTE,

Defendant - Appellant.

No. 06-10265

D.C. No. CR-05-00780-SRB

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Arizona  
Susan R. Bolton, District Judge, Presiding

Submitted March 12, 2008<sup>\*\*</sup>  
Phoenix, Arizona

Before: HAWKINS, THOMAS, and CLIFTON, Circuit Judges.

Mario Jaime-Duarte (“Jaime”) appeals his conviction for re-entry after deportation (8 U.S.C. § 1326(a), enhanced by § 1326(b)(2)), alleging error in the denial of his mistrial motion based on a government witness referring to Jaime’s

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

criminal history. Because the single reference to Jaime's criminal background did not tell the jury the specifics of any prior offense, the government did not mention or make use of the comment at any other point in the trial, and a proper curative instruction was given prior to jury deliberations, there was no abuse of discretion in denying Jaime's new trial motion. Even if we were to assume error, the other substantial evidence of Jaime's guilt rendered any such error harmless.

**AFFIRMED**